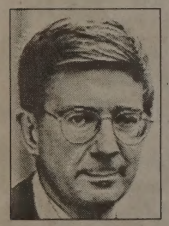
COMMENTARY

Colorado court decision on gay rights flouts Constitution

Astounding news from two courts handling similar cases: The First Amendment is unconstitutional. Indeed, the Constitution itself is constitutionally suspect.

Some very advanced thinkers on Colorado's supreme court and on a U.S. district court in Ohio have excavated from the Constitution a constitutional right to overturn limits the people place on the policies that legislative bodies can legislate. It turns out there is a remarkable right of political participation, a right that prevents the people from participating in politics by restricting the freedom of politicians. Confused? Not as much as these judges.



GEORGE F. WILL

In 1991 and 1992 Cincinnati's city council enacted ordinances prohibiting discrimination on the basis of sexual orientation in employment, housing and public accommodations. In a 1993 ballot initiative Cincinnati voters voided those ordinances by amending the city charter to prohibit the council from making sexual orientation the basis of any individual's claim for "preferential treatment." In 1994 a U.S. district court overturned the voters action on the grounds, among others, that it violated the First and 14th Amendment rights of an "independently identifiable group" to participate equally in the political process and to exercise free speech, free association and to petition the government for redress of grievances.

In 1992, after several Colorado cities enacted ordinances forbidding discrimination against homosexuals in employment, housing and public accommodations, Colorado voters ratified a constitutional amendment prohibiting municipalities from enacting such government interferences with the private choices of employers, landlords and others. In October 1994, the state supreme court ruled that this amendment violated the U.S. Constitution's guarantee of equal protection of the laws because it prevented homosexuals from participating equally in politics.

Demonstrators in New York City two years ago protest passage of Colorado's Amendment 2.

Now, never mind that the judge in the Cincinnati case, disregarding precedents, bestowed the status of a specially protected class on homosexuals, a decision which, if not overturned (as it probably will be) would make it constitutionally problematic for government to, for example, refuse to acknowledge homosexual marriages. But get this:

The judge said that what the people of Cincinnati did is impermissible because it deprives the city council — the people's representatives; the people's employees — of the right to overrule the people on a particular policy question. That is, when the people place limits on the freedom of a legislative body, they violate the political participation rights of those groups that favor things the legislative body is not permitted to do.

Colorado's supreme court similarly manufactured from the equal protection clause a new fundamental right that is a scythe with amazing power to cut things down. It is the right of any "independently identifiable class of persons" not to have an issue that it favors removed — "fenced out" is how Colorado's court put it — from the political process by state constitutional law. So it is unconstitutional to enact constitutional amendments that discourage the political participation of groups that favor legislation that, because of the amendments, would be unconstitutional.

The Colorado supreme court's ruling is being reviewed by the U.S. Supreme Court, which surely will note that the purpose of the Bill of Rights is to frustrate certain political preferences by placing them beyond the reach of normal political processes, outside the boundaries of legislative choice. For example, the First Amendment, which begins with those five lovely words "Congress shall make no law," sternly discourages "independently identifiable" classes of persons who want to abridge free speech or establish religion.

By the Colorado and Ohio courts' reasoning, the Fifth Amendment is unconstitutional because it discourages the political participation of people whose agenda includes taking property for public use without just compensation. Liberals who are pleased by these two courts' reasoning regarding homosexuals should be ready to live with this logic: The Supreme Court's assertion of a constitutional privacy right to abortion is an unconstitutional burden on the political participation rights of "independently identifiable" anti-abortion groups. Furthermore, any referendum that supersedes a legislative body and imposes restraints on smokers or gun owners unconstitutionally "disadvantages" those "independently identifiable" groups that are "fenced out" of participation in the lobbying of the legislative body.

The brief on behalf of Cincinnati's voters challenging the district court's ruling says, "In a system founded on the notion that the people are the source of all government authority, with the power to grant and delimit the authority of their representatives, it stands the system on its head to say that the Constitution requires that the representatives retain the right to control their constituents." But that is the astounding conclusion of two courts currently pushing the envelope of judicial activism.

Will is a syndicated columnist.

Disasters/Residents pass on costs to public

From F1

ture, most agree. The answer, they say, is to force communities and individuals to better prepare for potential mayhem or to shoulder a larger share of the burden after trouble strikes.

"People have got to take more responsibility for where they live," James Lee Witt, director of the Federal Emergency Management Agency (FEMA), said in a telephone interview from California earlier this month.

Eugene Lecomte, head of Insurance Institute for Property Loss Reduction in Boston, agreed. "I have been pointing out that you have a right to live where you want, at the ocean's edge or on top of a mountain," he said. "But you don't have a right to live there and pass along the responsibility to everybody else."

Beyond weather, politics and migration, the costs of catastrophe have been multiplied by an array of related problems.

Money that might have been spent to help people move out of disaster's path has gone instead to help them rebuild in dangerous spots, again, and again, and again.

Some 44 percent of all federal payments for post-disaster repairs since 1978 have gone to restore 60,000 buildings that already had been repaired after earlier disasters.

At the same time, local officials have failed to enforce building codes that could have significantly reduced the scale of disaster

A long-predicted major earthquake in Los Angeles could bring an estimated $180 billion in private insurance claims — enough to wipe out the capital of America's entire insurance industry with incalculable economic and social consequences, experts note.

A unpublished survey by the Insurance Institute for Property Loss Reduction estimates that the value of property located on America's dangerous coasts has exploded to $3.1 trillion in 1993 from $1.8 trillion in 1988.

"If you had Hurricane Andrew striking Miami head-on today, there probably wouldn't be a State Farm at the end of the year," said Shawn Mooney, an economist with the Insurance Loss Institute in New York, in a telephone interview earlier this month.

To help cover their exposure, the insurers have been lobbying in recent years for legislation that would impose a national insurance surcharge on property owners to fund a pool to help cover the costs of mega catastrophes.

Meanwhile, Witt and his allies in the Clinton administration have prepared a separate legislative proposal aimed at sharply changing the focus of the federal disaster-relief effort and controlling its costs over time.

The plan, sent last month to House Speaker Newt Gingrich, R-Ga., would, among other things, cap individual disaster aid to a fraction of the estimated assistance to communi-

BOOKMARKS

LANDMARKS: HarperCollins has just published its first book on "tree-free" paper. Kenaf (rhymes with giraffe), is a plant from the hibiscus family (related to cotton) that grows profusely in the South and Southwestern United States — shooting up to 14 feet tall in 4 months and producing 6-10 tons per acre (five times greater than timber-pulp trees). It's nearly impossible to tell the kenaf paper from wood-pulp paper.

The book, appropriately enough, is **David Brower's "Let the Mountains Talk, Let the Rivers Run,"** a practical look at ways to stem or reverse environmental damage. Brower, a famous mountaineer and conservation activist, writes with **Steve Chapple,** author of seven other books.

The book is being released in conjunction with the 25th anniversary of Earth Day, which is April 22.

SIGNINGS: Catch **Carolyn See** reading and signing copies of her book, **"Dreaming,"** at 7:30 p.m. Tuesday at the Tattered Cover, 2995 E. First Ave., Denver. Her story of growing up in a family besieged by drink and drugs is not so much a victim's tale as it is one of humor and survival.

HOT OFF THE PRESS: The death Jan. 22 of America's premiere matriarch, Rose Fitzgerald Kennedy at age 104, has sparked the publication of a biography, and the re-publication of her autobiography, originally printed in 1974.

In **"Rose: The Life and Times of Rose Fitzgerald Kennedy"** (Pocket Books, $23), best-selling author **Charles Higham** has explored her extraordinary life and turbulent times. The book examines the strength and patience it took to supervise the large, boisterous Kennedy clan, and also looks at her strained relationship with daughter-in-law Jacqueline Kennedy Onassis, and several others.

For a more heartfelt look at Kennedy's life, the new edition of her autobiography, **"Times to Remember"** (Doubleday, $25), written 20 years ago, surely will make you laugh and probably make you cry. The simplicity with which she recounts her emotions when son John F. Kennedy was assassinated is moving. She also tells about practical jokes for which the Kennedy boys in particular were known. It's a mother's story, one that ends long before her century of influence came to a close.

Compiled by Linda DuVal

BOOKS

Depression-era tale is memorable first book

"Private Altars"
By **Katherine Mosby**
Random House, $21

Reviewed by **Jeanne May**/Knight-Ridder Newspapers

This stunning first novel is the tale of a Northern woman of education and culture who marries a dashing and dissolute West Virginian and goes to live in his crumbling ancestral manse.

The match was bound to fail, and as the story opens shortly before the Depression, the wife, Vienna Daniels, and her two children are living alone in the mansion. The dashing West Virginian has dashed off into the night, and all that remains of him are the checks deposited in the town bank to keep his family alive. And alive they are — especially the children, as fascinating a pair of youngsters as you'll find anywhere.

Katherine Mosby's first novel is "stunning."

Willa and Elliott have been educated far beyond their years by their mother, but they shine with an innocence born of their isolation from classmates and neighbors. Willa is a reader, gobbling up the mountain of books that was part of her mother's dowry. Elliott is a naturalist, nursing sick animals back to health and keeping elaborate records of the flora and fauna of Winsville. He's quiet, slightly unnerved by Willa's bravado, yet enchanted by it.

This is a story about being different. Vienna has been considered odd by the town ever since she arrived, and after her husband flees she's seen as downright crazy. She shares her isolation with the black people of the town, who've been there as long as anyone remembers but, in the tradition of racism, remain outsiders.

Vienna confronts this racism directly, while white townspeople of good will try to deal with it obliquely. Ultimately, it's Willa and Elliott who bridge the gap and pay a horrible penalty for it.

Author Mosby is a New Yorker who teaches college writing. Occasionally her pace falters. But she has produced a riveting novel and created characters that will linger in your mind, — and your heart.

BEST SELLERS

Here are the best sellers for the week ending March 23, compiled from data

10. "Rogue Warrior: Green Team."

PAPERBACK

TRADE

1. "Chicken Soup for the Soul[illegible]